

# STATE OF NEW YORK

7216--A

2023-2024 Regular Sessions

## IN SENATE

May 18, 2023

Introduced by Sen. GONZALEZ -- read twice and ordered printed, and when printed to be committed to the Committee on Budget and Revenue -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to establishing a tax on noise emissions from non-essential helicopter and seaplane flights in cities with a population of one million or more

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The tax law is amended by adding a new article 12-B to read as follows:

### ARTICLE 12-B

#### NOISE TAX ON NON-ESSENTIAL

#### HELICOPTER AND SEAPLANE FLIGHTS

#### Section 289-g. Definitions.

289-h. Imposition of the noise tax on non-essential helicopter and seaplane flights.

289-i. Liability for the tax.

289-j. Exemptions from the tax.

289-k. Payment and returns.

289-l. Records to be kept.

289-m. Secrecy of returns and reports.

289-n. Practice and procedure.

289-o. Deposit and disposition of revenue.

§ 289-g. Definitions. For the purposes of this article, the following terms shall have the following meanings:

1. "Helicopter" means an aircraft, the support of which in the air is normally derived from airfoils mechanically rotated about an approximately vertical axis.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 2. "Helicopter or seaplane operator" means a person or entity which  
2 conducts non-essential helicopter or seaplane flights within a city with  
3 a population of one million or more.

4 3. "Seaplane" means any aircraft defined or classified as such by  
5 federal law, rule or regulation.

6 4. "Non-essential flight" means a flight made by a helicopter or seap-  
7 lane other than those conducted:

8 (a) for purposes of heavy-lift operations in support of construction  
9 and infrastructure maintenance;

10 (b) for purposes of public health and safety, including law enforce-  
11 ment, emergency response, disaster response, the provision of medical  
12 services, and providing other services; or

13 (c) for the benefit of the general public, including flights carried  
14 out for research or for official purposes by a news organization.

15 5. "Quiet aircraft" means a helicopter or seaplane of a model that has  
16 been certified as meeting the threshold to be classified as a quiet  
17 aircraft as per section two hundred eighty-nine-j of this article.

18 § 289-h. Imposition of the noise tax on non-essential helicopter and  
19 seaplane flights. In addition to any other tax or assessment imposed by  
20 this chapter or any other law, there is hereby imposed a noise tax on  
21 non-essential seaplane and helicopter flights at the rate of fifty  
22 dollars per seat ticket or two hundred dollars per flight, whichever is  
23 greater.

24 § 289-i. Liability for the tax. Any non-essential helicopter or seap-  
25 lane flight is subject to the tax imposed by this article. The tax  
26 imposed by this section shall not be imposed on any helicopter or seap-  
27 lane flights if such imposition is superseded by federal law or regu-  
28 lation.

29 § 289-j. Exemptions from the tax. (A) Any non-essential helicopter or  
30 seaplane flight conducted using a quiet aircraft is exempted from the  
31 tax imposed by section two hundred eighty-nine-h of this article. (B)  
32 The department, in consultation with the department of transportation  
33 shall create a registry of models of helicopters and seaplanes that will  
34 be defined as quiet aircraft for the purposes of this article. This  
35 registry shall be established by January first, two thousand twenty-  
36 five, and must be updated no less than every two years thereafter. (C)  
37 For a helicopter or seaplane model to be considered to be a quiet  
38 aircraft, the aircraft must be electric powered and, (i) for helicop-  
39 ters, create at least ten decibels less of noise, as measured under the  
40 procedures of Appendix H of 14 CFR part 36, as a helicopter that would  
41 meet the GCNP Quiet Aircraft Technology Designation established by 14  
42 CFR Appendix A to Subpart U of Part 93, or any federal limits on noise  
43 from helicopters enacted that are more strict than the GCNP Quiet  
44 Aircraft Technology Designation and (ii) for seaplanes, create at least  
45 ten decibels less of noise, as measured under the procedures of Appendix  
46 G of 14 CFR part 36, than a seaplane would make to comply with the stage  
47 5 noise levels adopted under 14 CFR Parts 36 and 91, which are equal to  
48 the levels established under International Civil Aviation Organization  
49 (ICAO) Chapter 14 of Annex 16, Volume I, or any federal limits on noise  
50 from seaplanes enacted that are more strict than the stage 5 noise  
51 levels.

52 § 289-k. Payment and returns. 1. Every helicopter and seaplane opera-  
53 tor shall file a return quarterly with the commissioner. Provided,  
54 however, that if the commissioner in the exercise of his or her  
55 discretion deems it necessary to protect the revenues to be obtained  
56 under this article, he or she may give notice requiring such operator,

1 in addition to filing a quarterly return, to file either short-form or  
2 long-form part-quarterly returns, as specified in such notice. For  
3 purposes of this article the term "long-form, part-quarterly return"  
4 shall mean a return in a form determined by the commissioner providing  
5 for the calculation of the actual taxes for the preceding month. For  
6 purposes of this article the term "short-form, part-quarterly return"  
7 shall mean a return which shall be available for use in filing as a  
8 return for the first two months of any quarter and only by a person  
9 required to file a return monthly who has had at least four successive  
10 quarterly tax periods immediately preceding the month for which the  
11 return is to be filed and who elects such use, and is in a form deter-  
12 mined by the commissioner and providing for the calculation of one-third  
13 of the total taxes paid by the person to the commissioner in the compa-  
14 rable quarter of the immediately preceding year under this article.

15 2. The returns and information returns required by this section to be  
16 filed quarterly shall be filed for quarterly periods ending on the last  
17 day of February, May, August and November of each year, and each return  
18 and each information return shall be filed within twenty days after the  
19 end of the quarterly period covered thereby. The returns required by  
20 this section to be filed monthly shall be filed for monthly periods  
21 ending on the last day of each month and each return shall be filed  
22 within twenty days after the end of each prior month. The information  
23 returns required to be filed annually shall be filed for twelve-month  
24 periods ending on the last day of May of each year, and each such infor-  
25 mation return shall be filed within twenty days after the end of the  
26 twelve-month period covered thereby.

27 3. The tax commission may permit or require returns to be made cover-  
28 ing other periods and upon such dates as it may specify. If the tax  
29 commission deems it necessary in order to ensure the payment of the  
30 taxes imposed by this article, it may require returns to be made for  
31 shorter periods than those prescribed pursuant to the foregoing subdivi-  
32 sions of this section, and upon such dates as it may specify.

33 4. The form of returns shall be prescribed by the tax commission and  
34 shall contain such information as it may deem necessary for the proper  
35 administration of this article. The commission may require amended  
36 returns to be filed within twenty days after notice and to contain the  
37 information specified in the notice.

38 5. In addition to any other penalty or interest provided for under  
39 this article or other law, and unless it is shown that such failure is  
40 due to reasonable cause and not due to willful neglect, any person  
41 liable for the tax imposed by this article that fails to pay such tax  
42 when due shall be liable for a penalty in an amount equal to four  
43 hundred percent of the total tax amount that is due.

44 § 289-l. Records to be kept. Every operator liable for the surcharge  
45 imposed by this article shall keep, and shall make available for review  
46 upon demand by the commissioner:

47 1. records of helicopter and seaplane flights undertaken by such oper-  
48 ator;

49 2. total amount of taxes collected under this article;

50 3. any information required by the department by rule or regulation;

51 4. true and complete copies of any records required to be kept by any  
52 applicable regulatory department or agency; and

53 5. such other records and information as the commissioner may require  
54 to perform his or her duties under this article.

55 § 289-m. Secrecy of returns and reports. 1. Except in accordance with  
56 proper judicial order or as otherwise provided by law, it shall be

1 unlawful for the commissioner, any officer or employee of the depart-  
2 ment, any person engaged or retained by the department on an independent  
3 contract basis, or any person who in any manner may acquire knowledge of  
4 the contents of a return or report filed with the commissioner pursuant  
5 to this article, to divulge or make known in any manner any particulars  
6 set forth or disclosed in any such return or report. The officers  
7 charged with the custody of such returns and reports shall not be  
8 required to produce any of them or evidence of anything contained in  
9 them in any action or proceeding in any court, except on behalf of the  
10 commissioner in an action or proceeding under the provisions of this  
11 chapter, or in any other action or proceeding involving the collection  
12 of a surcharge due under this chapter to which the state, the commis-  
13 sioner or an agency that is authorized to permit or regulate the  
14 provision of any relevant transportation is a party or a claimant, or on  
15 behalf of any party to any action, proceeding or hearing under the  
16 provisions of this article, when the returns or the reports or the facts  
17 shown thereby are directly involved in such action, proceeding or hear-  
18 ing, in any of which events the court, or in the case of a hearing, the  
19 division of tax appeals, may require the production of, and may admit in  
20 evidence so much of said returns or reports or of the facts shown there-  
21 by as are pertinent to the action or proceeding and no more. Nothing  
22 herein shall be construed, however, to prohibit the commissioner, in his  
23 or her discretion, from allowing the inspection or delivery of a certi-  
24 fied copy of any return or report filed under this article, or from  
25 providing any information contained in any such return or report, by or  
26 to a duly authorized officer or employee of the comptroller; nor to  
27 prohibit the inspection or delivery of a certified copy of any return or  
28 report filed under this article, or the provision of any information  
29 contained therein, by or to the attorney general or other legal repre-  
30 sentatives of the state when an action shall have been recommended or  
31 commenced pursuant to this chapter in which such returns or reports or  
32 the facts shown thereby are directly involved; nor to prohibit the  
33 commissioner from providing or certifying to the division of budget or  
34 the comptroller the total number of returns or reports filed under this  
35 article in any reporting period and the total collections received ther-  
36 efrom; nor to prohibit the delivery to a person liable for the tax  
37 imposed by this article, or a duly authorized representative of such, a  
38 certified copy of any return or report filed by such person pursuant to  
39 this article, nor to prohibit the publication of statistics so classi-  
40 fied as to prevent the identification of particular returns or reports  
41 and the items thereof; nor to prohibit the disclosure, in such manner as  
42 the commissioner deems appropriate, of the names and other appropriate  
43 identifying information of those persons required to pay the tax imposed  
44 by this article.

45 2. Notwithstanding the provisions of subdivision one of this section,  
46 the commissioner may permit the secretary of the treasury of the United  
47 States or such secretary's delegate, or the authorized representative of  
48 either such officer, to inspect any return filed under this article, or  
49 may furnish to such officer or such officer's authorized representative  
50 an abstract of any such return or supply such person with information  
51 concerning an item contained in any such return, or disclosed by any  
52 investigation of liability under this article, but such permission shall  
53 be granted or such information furnished only if the laws of the United  
54 States grant substantially similar privileges to the commissioner or  
55 officer of this state charged with the administration of the tax imposed  
56 by this article, and only if such information is to be used for purposes

1 of tax administration only; and provided further the commissioner may  
2 furnish to the commissioner of internal revenue or such commissioner's  
3 authorized representative such returns filed under this article and  
4 other tax information, as such commissioner may consider proper, for use  
5 in court actions or proceedings under the internal revenue code, whether  
6 civil or criminal, where a written request therefor has been made to the  
7 commissioner by the secretary of the treasury of the United States or  
8 such secretary's delegate, provided the laws of the United States grant  
9 substantially similar powers to the secretary of the treasury of the  
10 United States or his or her delegate. Where the commissioner has so  
11 authorized use of returns and other information in such actions or  
12 proceedings, officers and employees of the department may testify in  
13 such actions or proceedings in respect to such returns or other informa-  
14 tion.

15 3. (a) Any officer or employee of the state who willfully violates the  
16 provisions of subdivision one of this section shall be dismissed from  
17 office and be incapable of holding any public office for a period of  
18 five years thereafter.

19 (b) Cross-reference: For criminal penalties, see article thirty-seven  
20 of this chapter.

21 4. (a) Notwithstanding the provisions of subdivision one of this  
22 section, upon written request from the chairperson of the committee on  
23 ways and means of the United States House of Representatives, the chair-  
24 person of the committee on finance of the United States Senate, or the  
25 chairperson of the joint committee on taxation of the United States  
26 Congress, the commissioner shall furnish such committee with any current  
27 or prior year returns specified in such request that were filed under  
28 this article by the president of the United States, vice-president of  
29 the United States, member of the United States Congress representing New  
30 York state, or any person who served in or was employed by the executive  
31 branch of the government of the United States on the executive staff of  
32 the president, in the executive office of the president, or in an acting  
33 or confirmed capacity in a position subject to confirmation by the  
34 United States Senate; or, in New York state: a statewide elected offi-  
35 cial, as defined in paragraph (a) of subdivision one of section seven-  
36 ty-three-a of the public officers law; a state officer or employee, as  
37 defined in subparagraph (i) of paragraph (c) of subdivision one of such  
38 section seventy-three-a; a political party chairperson, as defined in  
39 paragraph (h) of subdivision one of such section seventy-three-a; a  
40 local elected official, as defined in subdivisions one and two of  
41 section eight hundred ten of the general municipal law; a person  
42 appointed, pursuant to law, to serve due to vacancy or otherwise in the  
43 position of a local elected official, as defined in subdivisions one and  
44 two of section eight hundred ten of the general municipal law; a member  
45 of the state legislature; or a judge or justice of the unified court  
46 system; or filed by a partnership, firm, association, corporation,  
47 joint-stock company, trust or similar entity directly or indirectly  
48 controlled by any individual listed in this paragraph, whether by  
49 contract, through ownership or control of a majority interest in such  
50 entity, or otherwise, or filed by a partnership, firm, association,  
51 corporation, joint-stock company, trust or similar entity of which any  
52 individual listed in this paragraph holds ten percent or more of the  
53 voting securities of such entity; provided however that, prior to  
54 furnishing any return, the commissioner shall redact any copy of a  
55 federal return (or portion thereof) attached to, or any information on a

1 federal return that is reflected on, such return, and any social securi-  
2 ty numbers, account numbers and residential address information.

3 (b) No returns shall be furnished pursuant to this subdivision unless  
4 the chairperson of the requesting committee certifies in writing that  
5 such returns have been requested related to, and in furtherance of, a  
6 legitimate task of the Congress, that the requesting committee has made  
7 a written request to the United States secretary of the treasury for  
8 related federal returns or reports or return or report information,  
9 pursuant to 26 U.S.C. Section 6103(f), and that if such requested  
10 returns are inspected by and/or submitted to another committee, to the  
11 United States House of Representatives, or to the United States Senate,  
12 then such inspection and/or submission shall occur in a manner consist-  
13 ent with federal law as informed by the requirements and procedures  
14 established in 26 U.S.C. Section 6103(f).

15 § 289-n. Practice and procedure. The provisions of article twenty-sev-  
16 en of this chapter shall apply with respect to the administration of and  
17 procedure with respect to the tax imposed by this article in the same  
18 manner and with the same force and effect as if the language of such  
19 article twenty-seven had been incorporated in full into this article and  
20 had expressly referred to the surcharge imposed by this article, except  
21 to the extent that any such provision is either inconsistent with a  
22 provision of this article or is not relevant to this article.

23 § 289-o. Deposit and disposition of revenue. All funds collected under  
24 this article shall be deposited into the environmental protection fund  
25 established by section ninety-two-s of the state finance law.

26 § 2. This act shall take effect January 1, 2024. Effective immediate-  
27 ly, the addition, amendment and/or repeal of any rule or regulation  
28 necessary for the implementation of this act on its effective date are  
29 authorized to be made and completed on or before such effective date.